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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/791,976

03/03/2004

Diana Lynne Gann

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11/01/2006

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL BUSINESS CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NT

Office Action Summary	Application No.	Applicant(s)	
	10/791,976	GANN ET AL.	
	Examiner	Art Unit	
	Karin M. Reichle	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 5-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

Drawings

1. The drawings were received on 8-14-06. These drawings are not approved by the Examiner. First a full set of Figures correcting the formalities noted in the PTO-948 was not submitted. Also, Figure 1 does not show the finger grip as shown in Figure 2 and the bottom of the tampon is still shown as a solid line not a dashed line. It is not clear whether Figure 2 shows what is set forth since it is not set forth what structure the longitudinal axis is an axis of. Therefore, the line 2-2 in Figure 1 should not be shown because it is no longer described.

2. Therefore, the drawings are still objected to because in Figure 1, tampon 14 and the line therefrom should be shown in dashed lines to denote underlying structure. Also, numeral 20 does not clearly denote the outer perimeter as described. Figure 1b does not appear accurate, i.e. the ridge at the opposite end adjacent 20 in Figure 1a is not shown. It is unclear whether Figure 2 is accurate since it is unclear what structure's longitudinal axis it is a cross section of as now described on page 3. The bracket denoted 26 in Figure 2 does not denote only the end of the tampon 14 as described. Figure 5 should clearly denote 15 therein. See also the PTO 948 attached to the 7-18-06 communication. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be

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canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Description

3. The disclosure is objected to because of the following informalities: The description of Figure 2 on page 3 is unclear for the reasons discussed supra and is inconsistent with page 7, lines 15-16, i.e. is the Figure 2 a cut out cross-section along line 2-2 or just a cut out view? In claim 1, Applicant claims a cap permanently associated with the tube. "Associated" as defined by the dictionary, i.e. Applicant did not specifically define this term, means "to bring into company with one another, join in a relationship". Therefore, a cap "permanently associated" with the tube interpreted in light of this definition, and page 5, line 20 and page 11, lines 7-10 is deemed to require permanent joining or attaching, directly or indirectly, of the cap with the tube. Claim 1 further requires the tampon, i.e. some portion thereof, to "contact" the cap during expulsion to reorient the tampon with regard to the tube. "Contact" as usually defined means "to touch", yet, despite the cancellation of claims 3 -4, the specification still describes the cap remains in association with the end of the tampon and/or the cap remains joined to the end. See

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and compare page 2, lines 26-28, the fourth full paragraph on page 7, the first full paragraph on page 8, and section I. on pages 9-11 which do not clearly delineate the invention. Therefore, it is still unclear whether the terminology of claim 1 requires touching but not necessarily “joining” and “association”, i.e. “associated” and “joined” appear to both require some type of connection, i.e. at a minimum indirect connection, and whether such is with respect to at least a portion thereof but not necessarily the end or the end because the description used to interpret the claim terminology still uses the terminology “remains in association” with the end or “remains joined” with the end, i.e. does the tampon touch the cap at a minimum or is it associated or joined thereto? Some portion at a minimum or the end? It is further noted that if at least some portion of the tampon is joined or associated, the entire tampon is also, i.e. at least indirectly, i.e. if the end remains associated or joined so does the entire tampon. A clear, complete description of the relationship between the tampon and the cap should **still** be set forth. Note the discussion in the Claim Language Interpretation section *infra*.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. Claims 1-2 and 5-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regard to claims 1-11, as discussed *supra* in paragraph 3 *supra*, the relationship between the tampon and the cap during expulsion is still unclear, e.g. claim 1 claims “said tampon contacts said...cap” yet as described in the application which is used to interpret the claim language, “said...cap.. remains in association with ...end of said

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“said...cap remains joined to...end of said tampon”, i.e. does “contact” mean touching or association and/or joining?

Claim Language Interpretation

5. The claim language is interpreted in light of the definitions set forth on page 4, lines 9-10, 15-16, 24-25, page 5, lines 3-5, 8-9, and 13 et seq, and page 6, lines 1-10. Additionally since the terminology “substantially aligned” and “substantially non-aligned” has not been specifically defined and “aligned” is defined by the dictionary as “to arrange in a line”, the claim language “said tampon... substantially aligned with said longitudinal axis of said...tube in a pre-expelled position” and “during expulsion...reorienting...non-aligned...tube” is interpreted to require the tampon from its insertion end to its withdrawal end being arranged substantially parallel to the longitudinal axis of the tube in the pre-expelled position but sometime during expulsion from the tube the tampon from its insertion end to its withdrawal end being substantially reoriented to not be in line with such axis. Also due to the lack of clarity discussed supra, claim 1 is interpreted to require some portion of the tampon touching the cap to reorient the tampon as interpreted supra, i.e. “contact” is interpreted to mean “touching”. Also, the terminology “associated” and “permanently associated” are interpreted as set forth supra.

Response to Arguments

6. Applicant’s remarks of 8-14-06 have been considered but are either deemed moot because the issues argued have not been reraised or are deemed not persuasive for the reasons set forth supra.

Allowable Subject Matter

7. The prior art references, alone or in any combination, do not teach a feminine hygiene product as set forth in claims 1-2 and 5-11, as best understood, see discussion supra.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any new grounds of rejection were necessitated by the cancellation of claims 3-4.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
October 27, 2006